AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE MONETARY PENALTIES ACT

DECISION

In the matter of an application for a review of the facts of a violation of section 40 of the *Health of Animals Regulations*, alleged by the Respondent, and requested by the Applicant pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act.*

Daniel Deshaies, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the written submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant did not commit the violation and is not liable for payment of the penalty.

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REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations.* The oral hearing was held in Vancouver on December 10th, 2002.

The Applicant made his own submissions.

The Respondent was represented by its solicitor, Ms. Vickie McCaffrey.

The Notice of Violation dated May 25, 2002, alleges that the Applicant, on or about 9:50 hours on the 25th of May, 2002, at Vancouver International airport, in the province of British Columbia, committed a violation namely: "*import an animal product to wit, meat without meeting the prescribed requirements",* contrary to section 40 of the *Health of Animals Regulations* which states:

> 40. No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part.

There is no dispute that the Applicant was importing meat products with a country of origin of China. The evidence differs, however, on the circumstances at the time of importation.

The Applicant contended that the meat products were declared to the Primary Customs Inspector on arrival in Vancouver from Hong Kong. Although the report of the Respondent implies the Primary Customs Officer was Inspector Dubé, the Respondent agreed with the Applicant, at the hearing, that the Primary Customs Officer was a female with blond hair, and not Inspector Dubé. Although a statement was supplied in the Respondent's report from Inspector Dubé, the Respondent did not provide any direct evidence from the Primary Customs Inspector.

Accordingly, the Tribunal finds on the basis of the direct evidence of the Applicant on this point, that the Applicant did make the Primary Customs Officer aware that he was importing meat products at the time of importation.

The main thrust of the Respondent's argument was a legal one, centering on the relationship between subsection 16(1) of the *Health of Animals Act,* and various provisions of the *Health of Animals Regulations.*

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In general, Part IV of the *Health of Animals Regulations* permits importation into Canada of most animal by-products, if the country of origin is the United States. If the country of origin is other than the United States, importation into Canada is only permitted (except for certain specified products such as gluestock and bone meal, for which there are other specific requirements) if the importer meets one of the following four (4) four prescribed requirements of Part IV of the *Health of Animals Regulations,* namely:

1. Under subsection 41.(1) if the country of origin has a disease-free designation and the importer produces a certificate signed by an official of the government of the country of origin that shows that the country of origin is the designated country referred to in the disease-free designation.

2. The importer meets the requirements of subsection 52.(1) which provides as follows:

> 52.(1) Notwithstanding anything in this Part, a person may import an animal by-product if the person produces a document that shows the details of the treatment of the animal by-product and the inspector is satisfied, based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, where necessary, on an inspection of the animal by-product, that the importation of the animal by-product into Canada would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.

3. The importer has acquired an import permit pursuant to subsection 52.(2).

4. The importer has presented the animal by-product for inspection and a satisfactory inspection has been carried out under paragraph 41.1(1)(a) which states as follows:

> 41.1(1) Notwithstanding section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than a thing described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if
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> (a) an inspector is satisfied on reasonable grounds that the animal by-product is processed in a manner which would prevent the introduction into Canada of any reportable disease or any other serious epizootic

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> disease to which the species that produced the animal by-product is susceptible and which can be transmitted by the animal by-product, provided that the animal by-product or the thing containing the animal by-product is not intended for use as animal food or as an ingredient in animal food.

No documentation was provided under the first three (3) requirements, and no inspection was made under the fourth (4th) requirement.

Subsection 16(1) of the *Health of Animals Act* provides

> 16.(1)Where a person imports into Canada any animal, animal product, animal by-product, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either, before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.

As earlier decided, the Applicant complied with this subsection.

At first glance, there appears to be a conflict between section 40 of the *Regulations*, and subsection 16(1) of the *Act*.

The Respondent tabled four (4) previous decisions of the Tribunal namely RTA 60001, 60002, 60003 and 60006. In all these cases the Applicant did not reveal an animal by-product was being imported at the time of importation, and in all cases the Tribunal found the Applicant had committed a violation under section 40 of the *Regulations.*

The Respondent tabled three (3) other Tribunal decisions, being RTA 60028, 60044 and 60041. In these three (3) decisions, the Tribunal found that the Applicant had made known to Customs Officers at the time of importation that the Applicant was carrying an animal by-product and hence met the requirements of subsection 16(1) of the *Health of Animals Act*. (It also meant that the animal by-product was presented and available for an inspection under paragraph 41.1(1) of the *Regulations*).

The Tribunal found that, by meeting the requirements of subsection 16(1) of the *Act*, the Applicant could not have been found to be in violation of section 40 of the *Regulations.*

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The Respondent argued that the first line of cases should be followed and presented

arguments as to why the latter three (3) cases were wrongly decided.

The basis of the Respondent's argument is that Part IV of the *Regulations* is a complete code or scheme to regulate the importation of animal-by-products (et. al.) and a violation takes place unless the animal by-product is imported in accordance with section 40 of the *Regulations*. Since the Applicant did not meet any of the first three (3) prescribed requirements earlier set out under section 40, the Respondent's position is that, even if the animal by-product had been presented to a Customs Officer at the time of importation, the Applicant would be committing a violation if the inspector is not satisfied on reasonable grounds that the animal by-product was processed in a manner set out in paragraph 41.1(1)(a) of the Regulations.

The Respondent tabled pages 83-93 of the text, "Drieger on the Construction of Statutes", 3rd edition, for the purpose of arguing that subsection 16(1) of the *Act* should be ignored, or at least read down, because the application of subsection 16(1) has the effect of rendering section 40 of the *Regulations* useless, and is not an intended interpretation.

The Respondent further argues that subsection 16(1) would create a defence which is not defensible and in conflict with section 40 of the *Regulations*.

In the latter three (3) decisions of the Tribunal earlier referred to, the Tribunal found that Part IV of the *Regulations* were made pursuant to the *Health of Animals Act*, and must be read in a matter consistent with the provisions of that *Act.* It held that, if an importer presented the animal by-product to a Customs Officer at the time of importation, the primary obligation of an importer of an animal by-product under the *Health of Animals Act* would be met, which would then rule out the commission of any violation under section 40 of the *Regulations.*

A contravention of subsection 16(1) of the *Act* is itself a violation under that *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, and in fact a very serious violation. For this reason, it cannot be overlooked or read down as is suggested by the Respondent.

The relevant provisions of the *Act* and the *Regulations* must be read together.

Under the fourth (4th) requirement of the Regulation, the Tribunal notes there is no obligation for an Inspector to inspect, nor are there any guidelines in the legislation for establishing "reasonable grounds". Further, there is no obligation for an Inspector to come to a decision as to whether the Inspector is satisfied the criteria have been met.

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This would lead to an untenable situation. The question as to whether a person is

committing a violation would be left to the whim and whimsy of an Inspector who has no obligation to inspect or to come to any decisions. This outcome could not have been contemplated by the legislators.

The Tribunal finds, when the relevant provisions of the *Act* and the *Regulations* are read together, a person does not commit a violation if that person, at the time of importation, either has documentation to comply with the *Regulations*, or presents the animal by-product for inspection in accordance with the *Act.* If, after presentation, there is no inspection, or there is an unsatisfactory inspection, the consequence is that person is prohibited from importing the product, and it could be confiscated. At the same time, it cannot also be said to have been imported contrary to section 40 of the *Regulation*s.

Similarly, although not an issue in this case, if a person had the required documentation under the *Regulations* to import an animal by-product but failed to present the product for inspection pursuant to subsection 16(1) of the *Act,* it would be unreasonable to conclude that a violation had been committed.

Consistent with the last three (3) decisions of this Tribunal tabled by the Respondent, the Tribunal finds the Applicant has met the requirement of subsection 16(1) of the *Act*, and that no violation was committed under section 40 of the *Health of Animals Regulations.*

Dated at Ottawa this 31st day of December, 2002.

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Thomas S. Barton, Q.C., Chairman